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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )

Implementation of Sections 3(n) )  
and 332 of the Communications Act )

Regulatory Treatment of Mobile Services )

GN Docket No. 93-252

To: The Commission

COMMENTS OF THE RURAL CELLULAR ASSOCIATION

The Rural Cellular Association ("RCA"), on behalf of itself and its members submit the following Comments in response to the above-captioned Notice of Proposed Rulemaking ("NPRM") released by the Commission on October 8, 1993.

**I. STATEMENT OF INTEREST**

1. The RCA is an association comprised of cellular operators providing service in rural America. RCA's members serve over eighty licensed areas across the country covering over 6.5 million in population. RCA members are licensees of Part 22 Domestic Public Cellular Radio Service ("DPCRTS") stations and Part 21 Point to Point Microwave Radio Service ("PPMRS") stations. Through these facilities, RCA member companies provide cellular service to small Metropolitan Statistical Areas ("MSAs") and Rural Service Areas ("RSAs"). RCA member companies are currently classified as common carriers. Under the Commission's proposal, RCA member companies would be classified as "commercial mobile service" providers. Accordingly, RCA member companies will be directly affected by the rules adopted in this proceeding.

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2. While the NPRM raises many issues with respect to the regulatory treatment of mobile services, RCA will confine its Comments to issues relating to 1) the classification of Personal Communications Services and other new technologies; 2) the provision of dispatch service by all commercial mobile service providers; 3) the Commission's proposed forbearance from certain aspects of Title II regulation; and 4) the procedures the FCC should use to establish the basis for states filing petitions with the FCC to initiate rate regulation.

## II. DISCUSSION

**A. All Mobile Services, Including Personal Communications Services and other New Technologies, Should Be Classified As Commercial Regardless Of Whether The Licensee Seeks to Also Provide Private Service Over The Frequencies.**

3. The Commission seeks comment with respect to the classification of Personal Communications Services ("PCS") under the new regulatory framework established by Section 332. The RCA respectfully submits that to the extent that PCS interconnects to the public switched network and is offered for profit it should be classified as a commercial mobile service. The determination of whether PCS is a private or commercial mobile service should turn upon the statutory definition and should not be left to the "choice" of the PCS licensee. The RCA applauds the Commission for its proposed flexibility, but is concerned that a PCS licensee will "choose" to be a private mobile service provider in order to circumvent the FCC's competitive bidding rules. Upon circumventing these rules and obtaining the license, the licensee could then

"choose" to become a commercial mobile service provider. The RCA believes that the public interest will best be served if all licensed PCS spectrum is auctioned regardless of whether it will be used for commercial or private mobile service and will elaborate its position with respect to this issue in the competitive bidding rulemaking proceeding.<sup>1</sup>

4. Additionally, the fact that a PCS licensee uses a portion of its allotted spectrum to provide private mobile service should not result in a reclassification of the service as private. The RCA believes that it will be an administrative nightmare for the Commission to administer dual regulation over the spectrum. Moreover, PCS providers will be at a regulatory advantage if they are permitted to use a portion of their licensed spectrum for private mobile services and a portion for commercial mobile service. Cellular carriers and other common carrier mobile service providers are not given the option of electing to use a portion of their spectrum to provide private mobile service. Congress's goal was to treat functionally equivalent mobile services equally for regulatory purposes. A dual regulatory process does not serve that goal. Accordingly, the RCA respectfully submits that if all or a portion of the allotted spectrum is to be used to provide a commercial mobile service, the licensee should be treated as a commercial mobile service provider for all regulatory purposes. This all or nothing approach will mitigate any potential unfair

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<sup>1</sup>In the Matter of Implementation of Section 309(j) of the Communications Act Competitive Bidding, PP Docket No. 93-23, Notice of Proposed Rulemaking released October 12, 1993.

advantage and will serve the public interest by alleviating Commission involvement in determining when and which regulations apply.

**B. Cellular Licensees Should Be Permitted To Provide Dispatch Service Over Their Cellular Systems.**

5. The Commission seeks comment on whether it should amend its rules to allow existing common carriers who are classified as commercial mobile services to provide dispatch service. While dispatch service has traditionally been a private land mobile service, Congress has given the FCC discretion to terminate the prohibition. Currently, under Rule Section 22.930, cellular carriers are permitted to provide ancillary and auxiliary services such as Basic Exchange Telephone Service and advanced cellular services. The FCC specifically restricts the provision of dispatch service using cellular frequencies.<sup>2</sup> Elimination of the dispatch prohibition would allow cellular companies greater flexibility to meet their subscribers' needs and will permit more efficient use of the spectrum. Dispatch service over cellular frequencies is technically possible and would promote efficient use of the spectrum. Moreover, eliminating the prohibition would promote increased competition in the marketplace and lower the cost to subscribers. Accordingly, the RCA supports the right for all commercial mobile service providers to provide dispatch service over their respective frequencies.

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<sup>2</sup>Amendment of Parts 2 and 22 of the Commission's Rules to Permit Liberalization of Technology and Auxiliary Service Offerings in the Domestic Public Cellular Radio Telecommunications Service, 3 FCC Rcd 7033 (1988).

**C. The Commission Should Limit The Degree of Title II Regulation Imposed on Commercial Mobile Service Providers.**

6. Under Section 332(c) of the Omnibus Budget Reconciliation Act of 1993 ("the Budget Act"), the Commission is afforded discretion to forbear, with certain exceptions, from Title II regulation of commercial mobile service providers. The Commission is required by the Budget Act to apply a three part test before it can forbear from applying Title II regulations to a commercial mobile service provider. That test allows forbearance if the Commission can demonstrate that enforcement of the Title II regulation (1) is not necessary to ensure that charges, practices, classifications, or regulations for or in connection with the service are just and reasonable and are not unjustly or unreasonably discriminatory ; (2) is not necessary for the protection of consumers; and (3) is consistent with the public interest.

7. After applying the forbearance test, the Commission concluded that the level of competition in the commercial mobile service marketplace is sufficient to permit it to forbear from tariff regulation of the rates charged by commercial mobile service providers to end users. RCA agrees with the Commission's tentative conclusion. With the wide array of commercial mobile services currently in place and with the imminent market entry of personal communications services ("PCS"), there is significant competition in the market for commercial mobile services. This competition provides sufficient disincentives to providers of commercial mobile

services to discriminate or charge unreasonable rates. Moreover, Congress' regulatory safeguards which would permit a state to petition the FCC for permission to initiate rate regulation under certain circumstances will further ensure that a commercial mobile service provider's rates are just and reasonable.

8. RCA member companies compete with at least one other cellular carrier in their service area and most member companies compete with cellular service resellers. Specialized Mobile Radio Service providers also provide functionally equivalent mobile services within member company service areas. In view of these competitive offerings, as well as the imminent implementation of PCS, the marketplace for commercial mobile services is sufficiently competitive to satisfy the criteria for forbearance established by Section 332(c)(1)(A) of the Budget Act. Enforcement of tariff regulation under Title II is not necessary to ensure just, reasonable and nondiscriminatory rates and forbearance is consistent with the public interest.<sup>3</sup> Accordingly, the RCA supports regulatory forbearance with respect to the filing of tariffs by commercial mobile service providers.

9. Using the same test, the RCA supports the Commission's tentative decision to forbear from all Title II regulation that does not relate to complaints, damages and liabilities. These sections of Title II include: 210 (Franks and Passes); Section 212 (Interlocking Directorates); 213 (Valuation of Carrier Property);

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<sup>3</sup> See also, Policy and Rules Concerning Rates For Competitive Common Carrier Services and Facilities Authorizations Therefor (Fifth Report & Order), 98 FCC 2d 1191 (1984).

215 (Transactions Relating to Services, Equipment, etc.); 218  
(Inquiries into Management); 219 (Annual and Other Reports); 220  
(Accounts, Records, and Memoranda; Depreciation Charges); and 221  
(Special Provisions Relating to Telephone Companies).

**D. Given The Amount Of Competition Present In The Mobile  
Services Market, Stringent Procedures Should be Adopted  
To Minimize Unnecessary State Rate Regulation**

10. Section 332(c)(3)(A) of the Budget Act preempts state and local rate and entry regulation of all commercial mobile services. Under Section 332(c)(3)(B), any state that currently has rate regulation of commercial mobile services in effect as of June 1, 1993, may prior to August 10, 1994, petition the FCC to extend that authority based on a showing that (1) market conditions will not protect subscribers from unjust, unreasonable, or discriminatory rates, or (2) the service is a replacement for landline telephone exchange service for a substantial portion of landline telephone service in the state.

11. In evaluating such petitions, the RCA urges the Commission to apply the following criteria: in order to make the necessary showing to extend or initiate rate regulation, the state must either demonstrate that the specific mobile service provider does not have an FCC licensed competitor providing the same type of service or a functionally equivalent service covering seventy-five percent of the same geographic service area or that the commercial mobile service provider has a fifty percent or higher penetration level within the state (penetration being defined as the number of subscribers compared to the overall population of the state).

12. The RCA respectfully submits that given the amount of competition which currently exists within the commercial mobile services marketplace and the Commission's recent decision to license up to seven broadband PCS providers as well as thirty-four narrowband PCS providers, it is highly unlikely that a state will be able to make the necessary showing to warrant state entry and rate regulation of a commercial mobile service provider.

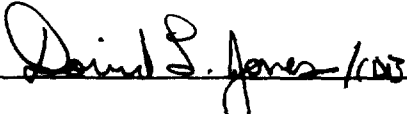
#### CONCLUSION

13. The proposed implementation of Section 332 of the Budget Act to create a comprehensive framework for the regulation of mobile radio services is crucial to the continued rollout of cellular services and other advanced telecommunications services in rural areas. The RCA respectfully submits that competing market forces coupled with the forbearance of unnecessary regulation will best serve the public interest by permitting new and innovative technology and service providers to compete on a level playing field. For these reasons, the Commission's adoption of the recommendations set forth above will serve the public interest.

Respectfully submitted,

RURAL CELLULAR ASSOCIATION

By:

A handwritten signature in dark ink, appearing to read "David L. Jones", is written over a horizontal line.

David L. Jones, Chairman  
Government and Industry Affairs Committee

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